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The Honorable Timothy W. Dore
Chapter 13
Location: Seattle

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

CHAPTER 13

ANTONIO FRANCINE FLIGHT and KIM
LYNNICE FLIGHT,

NO. 14-16434-TWD

Debtors,

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT

THE BENSON CONDOMINIUM OWNERS
ASSOCIATION, a Washington non-profit
corporation,

Adv. No.

Plaintiff,

v.

ANTONIO FRANCINE FLIGHT and KIM
LYNNICE FLIGHT, individually and their
marital community,

Defendants.

Plaintiff, The Benson Condominium Owners Association (the "Association"), by and through its undersigned counsel, hereby alleges as follows for its complaint against Antonio Francine Flight and Kim Lynnice Flight, individually and their martial community (collectively, the "Defendants").

I. PROCEDURAL HISTORY

This is an adversary proceeding brought pursuant to Part VII of the Federal Rules of Bankruptcy to determine the dischargeability of a debt owed by Defendants to the Association

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT - 1

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1 for condominium assessments that accrue post-filing of Defendants' Chapter 13 petition, which
2 was filed on August 28, 2014 under cause number 14-16434.

3 **II. JURISDICTION AND VENUE**

4 1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.
5 §§ 157 and 1334.

6 2. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

7 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1409(a).

8 **III. PARTIES**

9 4. Identity of Plaintiff. The Association is a Washington non-profit corporation. The
10 Association administers the affairs and business of The Benson, a Condominium, in accordance
11 with the provisions of RCWs 64.32 and 64.34, and the Declaration and Covenants, Conditions,
12 Restrictions, and Reservations for the Benson, a Condominium, recorded on April 11, 1977,
13 under King County recording number 7711040936, and any and all amendments thereto (the
14 "Declaration"), the Association's Bylaws, and Rules and Regulations (collectively, the
15 "Governing Documents").

16 5. Identity of Defendants. Defendants Antonio Francine Flight and Kim Lynnice
17 Flight, individually and their martial community are the owners of the property located at 1425 S.
18 Puget Dr. #E-6, Renton, King County, Washington 98105 (the "Property"). The Property is
19 located within The Benson, a Condominium.

20 **IV. FACTS**

21 6. The Declaration is operative as a set of covenants running with the land for The
22 Benson, a Condominium. All units within The Benson, a Condominium, and the owners thereof
23 are subject to the covenants, conditions, restrictions and reservations contained in the
24 Declaration.

25 7. The Declaration provides, in pertinent part, as follows:

1 Section 12.2 Payment by Owners.

2 Each owner shall be obligated to pay its share of common expenses
3 and special charges made pursuant to this Article to the treasurer for
4 the Association in equal monthly installments on or before the first day
5 of each month during such year, or in such other reasonable manner as
6 the Board shall designate. Any unpaid assessment or charge shall bear
7 interest at the rate of ten percent (10%) per annum from due date until
8 paid. The budget may be reviewed and revised by the membership at
9 any annual meeting, or any special meeting called for such purpose, but
10 if not so reviewed or if no change is made, shall be deemed approved.

7 Section 12.9 Lien Indebtedness.

8 . . . The amount of any assessment or charge, whether regular or
9 special, assessed or charged to any apartment and the owner and/or
10 purchaser of any apartment, plus interest at the rate of ten percent
11 (10%) per annum, and costs, including reasonable attorney's fees, shall
12 be a lien upon such apartment, the appurtenant limited common area
13 and the exclusive use thereof. . .

12 8. The Condominium Act, RCW 64.34.364(7), provides in pertinent part that
13 "[r]ecording of the declaration constitutes record notice and perfection of the lien for
14 assessments" and that no further recording of any claim of lien is required.

15 9. At all times relevant to this action, the Defendants had actual and record notice of
16 the Declaration, the Association's lien rights, and their obligation to pay assessments, interest,
17 late charges, collection costs, and attorneys' fees to the Association.

18 10. The Association was listed as a creditor in Defendant's Chapter 13 bankruptcy
19 case, the voluntary petition for which was filed on August 28, 2014.

20 11. Defendants identified their unit in the Benson, #E-6 (the, "Property"), as secured
21 property to be surrendered. The Property is legally described as follows:

22 UNIT E-6, THE BENSON, A CONDOMINIUM, SURVEY MAP AND PLANS
23 RECORDED IN VOLUME 14 OF CONDOMINIUMS, PAGE(S) 41 THROUGH
24 48, INCLUSIVE; CONDOMINIUM DECLARATION RECORDED UNDER
25 RECORDING NUMBER(S) 7711040936 AND AMENDMENTS THERETO, IN
 KING COUNTY, WASHINGTON; TOGETHER WITH PARKING SPACE(S)
 131 (LIMITED COMMON ELEMENTS); EXCEPT WEST 8 FEET OF
 COMMON AREA TAKEN FOR BENSON ROAD BY KING COUNTY
 SUPERIOR COURT CASE NUMBER 81-2-10994-2; AND EXCEPT

1 PORTION OF COMMON AREA TAKEN FOR ROCKERY BY KING COUNTY
2 COURT CASE NUMBER 91-2-22272-9

3 SUBJECT TO: EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS
4 AND RESERVATIONS OF RECORD

5 Tax Parcel Number(s): 073780-0810-03

6 12. Defendants' Chapter 13 plan does not propose to pay the Association for post-
7 petition assessments that accrue during the pendency of Defendant's Chapter 13 bankruptcy,
8 and Defendants have failed to pay post-petition assessments. The assessments are secured by
9 the Association's assessment lien and as such the Association has a legal, equitable, or
10 possessory ownership interest in the Property.

11 **V. CAUSE OF ACTION:**
12 **DETERMINATION OF NON-DISCHARGEABILITY**

13 13. Pursuant to 11 U.S.C. § 1328(b)(c) and 523(a)(16), fees or assessments owed to
14 a condominium association that become due and payable after the order for relief in a Chapter
15 13 bankruptcy case are non-dischargeable where a debtor has failed to complete payments
16 under the plan, unless the debtor meets certain conditions for discharge under 11 U.S.C. §
17 1328(b);

18 14. The Defendants' plan does not account for post-petition assessments and, in
19 fact, Defendants surrender the Property in their Chapter 13 plan. Regardless, the fees and
20 assessments that accrue post-petition are a non-dischargeable debt.

21 15. The Association requests a determination that said assessments are non-
22 dischargeable.

23 **VII. PRAYER FOR RELIEF**

24 WHEREFORE, the Association requests that this Court enter judgment against
25 Defendants as follows:

a. Declaring that condominium assessments, inclusive of interest, late fees,
charges and attorney's fees and costs of collection, that accrue post-petition are non-

1 dischargeable and continue to be non-dischargeable in Defendants' Chapter 13 bankruptcy
2 case;

3 b. Declaring that Association's lien against the Property for unpaid condominium
4 assessments and fees is not extinguished and shall retain all rights and priorities existing prior
5 to the filing of Defendants' bankruptcy case;

6 c. Directing the Defendants to modify the Chapter 13 plan to reflect the non-
7 dischargeability of condominium assessments and fees owing to the Association;

8 d. Granting the Plaintiff its attorneys' fees and costs as the prevailing party; and

9 e. Granting the Plaintiff all other relief as is just and proper.

10 Dated this 25th day of September, 2014.

11
12 **CURRAN LAW FIRM, P.S.**

13 /s/ J. David Huhs
14 J. David Huhs, WSBA #37990
15 Attorney for Plaintiff
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